IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH,JAIPUR.

S.B.Civil Writ Petition No.7210/91.

The Rajasthan Sahkari Bank Karmchari Sangh.

Versus.

The Jaipur Central Cooperative Bank Ltd. & Another.

Date of Judgment: 11.2.2009.

Hon'ble Mr.Justice Mohammad Rafiq.

Mr.Mahender Singh for the petitioner.
Mr.Vijaindra Kumar Yadav)
Mr.Anand Singh Rajawat) for the respondents.

This writ petition has been filed by the petitioner Rajasthan Sahakari Bank Karmchari Sangh, Jaipur, assailing the order dated 4th June,1991 passed by the Registrar, Co-operative Department, Rajasthan, Jaipur.

The factual matrix of the case is that the appropriate Government made a reference on an industrial dispute to the Industrial

Tribunal, Jaipur on the question whether demand of the Petitioner Sangh for parity in the wages and allowances to its members at par with the employees of the Rajasthan Co-operative Bank Ltd.,(hereinafter referred to as 'the Apex Bank') w.e.f. 1st July,1983 was justified, and if so, what relief they are entitled to ? The Tribunal after adjudication of the dispute answered the reference in the affirmative and held that the demand of the employees of the two Banks, namely, Jaipur Central Cooperative Bank Ltd.,Jaipur and the Central Co-operative Bank, Tonk, is just, proper and genuine and the pay-scale of the clerks in the Apex Bank is Rs.446-1502, the pay scale of the IVth Class in the Apex Bank is 335-702. It was further held that the said scales along with annual grade increments and stage to stage fixations shall be admissible to the employees of the Central Cooperative banks also.

The aforesaid award was challenged by the Jaipur Central Co-operative Bank by filing a writ petition to this Court (S.B.Civil Writ Petition No.338/88). This Court vide order dated 5th April 1991 disposed of the writ petition by passing a consensual order. The operative portion of the aforesaid order is reproduced as under:-

> "Heard learned counsel for the parties.
>
> Learned counsel for both the parties agree that the employees of the petitioner namely the Central Co-operative Bank Ltd., Tonk and Jaipur, shall be given the same wages, allowance and facilities as are being given to the employees of the State Co-operative (Apex) Bank. It was also agreed upon that the Registrar Co-operative shall examine whether the system of stage to stage fixation is prevalent in the Apex Bank or not. In case, it is prevalent in the Apex Bank,

the same benefit shall also be extended in favour of the employees of the Central Co-operative Bank Ltd., Tonk and Jaipur. In case, the Registrar, Co-operative Societies finds that the system is not prevalent in the Apex Bank, the benefit of stage to stage fixation shall not be made available to he Bank employees of Central Co-operative Bank Ltd., Jaipur and Tonk.

The Registrar, Co-operative Societies, is, therefore, directed to take action in the matter in the light of the order passed by this Court within two months from today and he should decide the matter within two months from today.

The writ petition is disposed of accordingly.

No order as to costs".

A perusal of the aforesaid judgment of this Court would show that the Registrar Co-operative Societies was directed to examine

whether the system of stage to stage fixation was prevalent in the Apex Bank or not and in case it was prevalent in the Apex Bank, the same benefits shall also be extended to the employees of the Central Co-operative Bank Ltd., Tonk and Jaipur. It was also directed that if the Registrar Co-operative Societies finds that the system is not prevalent in the Apex Bank, the benefit of stage to stage fixation shall not be made available to the Bank employees of Central Co-operative Bank Ltd., Jaipur and Tonk.

The Registrar Co-operative Societies upon hearing both the parties examined the matter and passed an order on 4 June, 1991 wherein he came to the conclusion that the stage to stage fixation taking into consideration the earlier increments in the old scale as claimed by the Sangh is not prevalent in

the Apex Bank and the employees of Central Co-operative Bank Ltd., Jaipur and Tonk are not entitled for such stage to stage fixation as claimed by them.

As a result of the finding and decision of the Registrar Co-operative Societies, the Apex Bank by it's order dated 11th July,1991 issued an order in compliance of the order of Registrar in respect of fixation of the employees in the revised pay scales with effect from 1.7.1986 and ordered that the excess payment made to the employees as the result of fixing their pay stage to stage in the pay scales equal to the employees of Apex Bank in pursuance of award of Labour Court would not be payable to the employees or the concerned Bank and whatever was paid pursuant to order of this Court w.e.f. 20.12.1989 to 20.12.1990 may be recovered.

This writ petition was originally allowed by this Court vide judgment dated 30th July,1992. However, the aforesaid judgment was challenged before the Division Bench by way of filing appeal (D.B.Civil Appeal(Writ) No.520/1993) by Tonk Central Co-operative Bank Ltd., through its Managing Director on the ground that it was not a party to the writ petition nor any notice or opportunity of hearing was given to it. The said appeal was allowed vide judgment dated 23.1.2004 and the matter was remanded back to the Single Bench for hearing afresh, with the direction to implead the Tonk Central Co-operative Bank Ltd., Tonk, through its Managing Director as party respondent No.3 in the writ petition.

I have heard learned counsel for the petitioner and the counsel appearing on behalf of the respondent Banks.

Mr.Mahender Singh learned counsel for the petitioner has argued that the order of Registrar dated 4th June, 1991` and the order dated of the respondent No.1 dated 11.7.1991 are illegal and contrary to the directions given by the High Court and also in violation of the award passed by the Tribunal. He contended that the Registrar Cooperative Societies erred while passing the impugned order,and lost sight of the parity. He contended that a consent order was passed by this Court wherein the Registrar was entrusted to undertake to limited exercise to examine whether stage to stage fixation is prevalent in the Apex Bank or not and in that event same benefit would then be extended to the two Banks. He contended that the Registrar could not while undertaking such exercise and go into the correctness of the award and the observations made in the

judgment of this Court.

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He contended that respondent No.2 has committed error while passing the order dated 4th June 1991 and took it for granted that this Court by its judgment dated 5th April 1991 has set-aside the award by giving fresh direction to decide the dispute about the stage to stage fixation. Learned counsel for the petitioner argued that even on the merit of the case, the Registrar Cooperative Societies has taken erroneous view of the matter by ignoring practically stage to stage fixation laid down by the Apex Bank. The series of documents produced before the Registrar proved as a whole that stage to stage fixation was being followed by Apex Bank which had given such benefits to its employees. Learned counsel for the petitioner has referred to resolution No.5 dated 21.4.1970 passed by the Board of Directors of Rajasthan Cooperative Bank Ltd.,

Jaiur, settlement between the Rajsthan State

Cooperative Bank Ltd and its employees dated 1.6.1969, settlement dated 2.2.1973, 28th Dec.,1977, 7th March 1984 and 5th August 1987 to bring home the point.

Learned counsel for the petitioner argued that the award of Labour Court regarding parity was binding on the parties thereto. Since it was an award made under Section 17 of the Industrial Disputes Act and even after termination , the award will remain in force as a binding agreement between the parties till it is replaced by a settlement or other award. It was not open to the Registrar to terminate and unilaterally repudiate an award without complying with the requirements of Section 19. Therefore, the entire impugned order of Registrar is based on misconception that this Court vide its judgment dated 5th April, 1991 has made a

fresh reference to the Registrar to decide the controversy in question. He was merely required to examine whether stage to stage pay fixation system was prevalent in the Apex Bank and extend the same to the employees of the Central Bank.

Learned counsel appearing for the respondents has opposed the writ petition and arguments advanced by Mr.Mahender Singh and submitted that the order passed by the Registrar in pursuance of Order passed by this Court on 5th April 1991 would equally bind the petitioner-Sangh. It was in that order that the Registrar was authorized to decide whether the system of stage to stage fixation was prevalent or not and in case the same was prevalent, then only to extend the same to the employees of Central Cooperative Banks. The Registrar within the scope of that

Order examined the system of fixation and lastly his finding was that such system was not prevalent. Consequently, the employees of Central Cooperative Banks Tonk and Jaipur are not entitled to such fixation as claimed by them. It was argued that the award of the Tribunal holding the employees of the above referred to two Banks entitled to fixation shall stand modified by the Judgment of this Court and on that aspect, now it is to be governed by the findings given by the Registrar Cooperative Societies. The order passed by Registrar is just and proper and the same was passed on appreciation of evidence. The writ petition be therefore dismissed.

I have given my careful consideration to the rival submissions and perused the impugned order.

Although it is true that this Cort passed a consent order empowering the Registrar Cooperative Societies to examine the question whether the system of stage to stage fixation was prevalent for the employees of the Apex Bank, but with that writ petition was disposed of and this may result in making implementation of the award passed by the Tribunal depended on the findings recorded by the Registrar. As a matter of fact, however there existed system of stage to stage fixation in the Apex Bank and the award of Tribunal thereby did not get obliterated. The Tribunal in it's order dated 14th July 1987 held as under:-

> "I have to keep in my mind certain facts which are too obvious to need reiteration. The first fact is that the employees in the Branch in Jaisalmer District are getting

the same wages, allowances and

facilities as are given in the Apex Bank at Jaipur and at the same time they are discharging the same work as is being discharged by the employees of the banks. This gives strength to the contention raised before me by Shri Jain to the effect that parity in the pay scales must be granted on the basis of region-cum-industry formula. Another fact to be taken into consideration is that the cooperative bank at Kota has reached a settlement with its employees where under the latter have been given the same wages, allowances and facilities as are admissible to the employees of the Apex Bank. Another point to be kept in mind is that the purpose of the cooperative banks is not to earn profit. The employees cannot be deprived of what is due to them on one pretext or the other. Their demand cannot be defeated on the ground that the three other unions reached a settlement Ex.4-2 with

> the banks on 7.2.85. Apart from this settlement dated .2.85 has expired on 30.86. Their demand also cannot be defeated on the ground that the employees have availed themselves of the benefits which accrued to them under the settlement Ex.M-2 dated 7.2.85."

No doubt, the Registrar in passing the impugned order has examined the matter on evidence of system of stage to stage fixation but in doing it could not altogether ignore the findings recorded by the Tribunal. Coming now to the order passed the Registrar, I find, though he has noticed the terms of the settlement dated 21st April, 1970 which the Apex Bank adopted by Resolution No.5, but he declined to take the same into consideration on the premises that it was not incorporated in the in the settlement dated 14th May 1980. For the settlement of 1980-84,

he held that formal fixation narrated wherein there was different while in settlement of 1980, 159.6% of the basic pay which formed the D.A was merged with pay and the pay was fixed nearest to the next stage fixed for the Clerks. However, 212.6% of the basic pay (D.A)of Class IV employees was merged with the pay and the pay was fixed at nearest stage in the new pay scales.

Regarding Settlement of 1984 in general special allowance of Rs.50/- to Clerks and Rs.20/- to Class IV were given. But subsequently by a resolution, it was reduced to Rs.25/- to clerks and Rs.20/- to Class IV respectively. Even from the settlement of 1970, it would be evident from Para 7 thereof that in case pay scale was revised, it was agreed that the basic of the fixation shall be stage to stage fixation. This

settlement was to remain operative for 3 years. Another settlement came into force on 1st September,72 and it would be evident from Para 4 thereof that pay scales of Clerks and Class IV employees were revised with their pay fixation and employees were allowed stage to stage fixation. The third settlement came into force on 22.2.73 under which also new pay scales for Class IV employees were agreed in Para No.9 & 10 which deal with fixation under Service Rules of the employees. A Look at the fixation settlement would show that the scale indicated therein were stage to stage fixation with the grant of increment intermittently for different stages. This would show that an employee drawing Rs.150/-. The finding recorded by the Registrar that there was no such stage to stage fixation, cannot be upheld because stage to stage fixation is nothing but

fixation at the corresponding scale in the revised pay-scale.

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It is necessary to mention here that in the various settlements, there shall be stage to stage fixation, but even where they agreed to the scale of pay with different stage, therein also it can be presumed that there was system of stage to stage fixation. It is in that light that one has to appreciate the merger of 159.6% and 212.6% D.A with the existing pay of the Clerks and Class IV employee respectively in settlement of 1980 so as to arrive at the nearest to the next stage of which reference has been made in earlier pages.

Coming to the settlement which is Annexure-9, a new pay scale was given to Clerks and Class IV employees according to which, the pay scale clerks was revised to Rs.160-6-178-8-210-12-282-15-342-18-360=20-440-25-490 and the pay scale of Class IV was

revised to Rs.130-2-1/2-113-3-128-4-148-5-188

respectively, from which, it would be evident that there was increase of salary and thereby fixation was made providing 9% increase on the basic pay thereof. In fact, it amounts to fixation from stage to stage and this does not detract from the fact that actually pay fixation was made from stage to stage.

With the above discussion, this writ petition deserves to be allowed and the same is hereby allowed. The order passed by the Registrar Cooperative Society dated 4th June 1991 holding that the stage to stage fixation taking into consideration the earlier increments in the old scale as claimed by the petitioner Sangh, is not prevalent the Apex Bank is set-aside. It is held that stage to stage fixation was prevalent in the Apex Bank, therefore, employees of the Central Co-operative Bank Ltd., Jaipur and Tonk are

also entitled to the stage to stage fixation. It is further held that the employees of the aforesaid two Banks are entitled to be treated similarly and identically in the matter of fixation of pay and increase in the pay as given to the employees of the Apex Bank.

Resultantly, action of the respondents in making deduction/recovery as noticed above is held to be illegal and the employees of the aforesaid two Banks are entitled to get refund of the recovered amount as such.

Writ Petition is accordingly allowed with no order as to costs.

(Mohammad Rafiq)J.

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